

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service Commission, on its own motion, to make adjustments to the universal service fund mechanism established in NUSF-26	Application No. NUSF-50 Progression Order No. 1
QWEST CORPORATION'S INITIAL COMMENTS TO JULY 18, 2006 STAFF PROPOSAL	

Qwest Corporation ("Qwest") submits its initial comments to the informal Staff Proposal (the "Proposal") relative to Progression Order No. 1 in this docket, as provided in the Commission's order dated July 18, 2006, as follows:

Introduction

At the outset, Qwest would note that the Proposal is so vague and general that informed comment is nearly impossible. Moreover, the fact that the Commission plans to issue a more formal proposal on August 22, the third business day after these comments are filed on August 17, makes it nearly impossible for the Commission to fully consider the comments that are filed. These proposals involve shifting tens of millions of dollars away from supporting rural telecommunications services in Nebraska. Qwest believes that the issues in this docket are important enough to warrant full evidentiary development, examination, and thoughtful consideration by the Commission, and urges the Commission to reconsider its schedule set forth in the July 18 order, require the Staff to provide a more detailed proposal, provide interested parties with all necessary

factual and evidentiary support that will be needed, hold hearings, permit argument, and generally provide affected carriers, other parties, and consumers the due process opportunity to meaningfully participate in these fundamental changes to universal service support in Nebraska. With that said, Qwest has the following observations on the specific sections of the Proposal:

1. *Dedicated Wireless Program*

This initial portion of the Staff's Proposal should not be considered at this time. First, the issue of directing funding away from the high-cost wireline fund to the dedicated wireless fund was never included as a part of NUSF-50 or this *Progression Order No.1* until the Staff's proposal. Beyond that issue, however, Qwest's initial reaction to the general proposal to reserve five million dollars for a dedicated wireless infrastructure program beginning in January 2008 is that the proposal is unripe and premature. The Commission and several interested parties spent years in pursuit of a permanent, predictable universal service support fund for wireline services. In the final substantive decision relating to that effort, the Commission held in November 2004 that "[b]ased on the Commission Staff's economic study, the Commission's current policy perspective is that public interest would be adversely affected if the NUSF were to support more than one network in the remote rural areas where support is being targeted." *Findings and Conclusions*, Docket No. NUSF-26, November 3, 2004, ¶ 15, at 6. Now, less than two years later, significant changes to the size of the fund and its distribution methodology are being proposed in this docket. All of those changes involve reducing support to the single network the Commission sought to protect in

NUSF-26, even without considering the proposition of diverting funding to a dedicated wireless fund. Diverting between ten and twenty percent of the remaining NUSF funds to the dedicated wireless fund under the current, reduced surcharge simply cannot be consistent with the Commission's policy statements in November 2004.

The policy statements of NUSF-26 aside, the Staff Proposal is not supported by sufficient evidence or information to warrant its approval, or indeed to permit informed comment by the parties to this action. The Proposal lacks any information to justify reserving the proposed five million dollars. There is similarly no support for the proposed growth of the reservation by four percent annually, or for establishing a cap of \$10 million. There is no information that such money would be enough or too much to meet even the new policy goals articulated in Docket NUSF-48. There are no standards articulated by which the Commission would disburse these funds, what projects would be funded, what carriers could qualify, how these carriers would go about qualifying for support, how carriers would account for support or investment, or several other important points of information. In the midst of the rapidly changing regulatory environment for wireline support, the proposition of reserving such a large amount of money for wireless infrastructure without such standards, and without even a study determining the need for such funds and comparing that need to the need for wireline funds "puts the cart before the horse." The Commission should first decide the scope of the need, the cost to meet that need, compare the costs and needs in the wireless environment to the costs and needs of the wireline environment, and establish at least general standards for the distribution of any funds before making any decision to reserve funds to the dedicated wireless fund. Qwest believes that such an inquiry

should yield the conclusion that five million dollars is an excessive amount to divert away from wireline services at this time. Regardless of whether other carriers or the Commission ultimately agree with this proposition, however, prudence and policy strongly militate towards careful consideration of these issues, properly noticed and heard in a separate docket, before making any decisions about how much money should be set aside for the dedicated wireless fund.

2. NUSF-7

Qwest agrees with the Proposal's approach to NUSF-7 grants. However, any changes to NUSF-7 grants made in response to the Proposal should not and cannot apply to prior Commission orders approving infrastructure investments and associated distributions. Carriers have already made investments and pursued plans approved by Commission orders in reasonable reliance that those orders were binding. The Commission cannot change these operating assumptions after the fact.

3. Wireline High-Cost

As an initial matter, the Proposal provides no support for the proposed reduction in fund size of between \$20-25 million, for a proposed growth rate of 1% per year, or for the Staff's decision to support the 5.95% surcharge this year, when Staff supported retaining the 6.95% surcharge in 2005. Without any support or rationale for these proposals, no party can provide informed comment, and the Commission cannot make an informed decision. Based on the information provided, parties cannot even comment as to whether the revenue generated by the 5.95% surcharge would require such a

reduction standing alone, or whether the proposed reduction is required, excessive, or insufficient when viewed together with other portions of the Proposal.

Additionally, simply reducing the high-cost fund is not fair or sufficient, as discussed in Qwest's prior comments in this docket. The purpose of the high cost fund implemented by dockets C-1628 and NUSF-26 was to move implicit subsidies contained in business and access rates to the explicit subsidies of the NUSF. This approach is mandated by Neb. Rev. Stat. § 86-323(7) which requires that any NUSF plan must "replace" implicit support mechanisms in access rates. With the final order in docket NUSF-26, and the Staff Proposal at issue in this *Progression Order No.1*, the explicit subsidies no longer "replace" the implicit subsidies in Qwest's access and business rates, reduced in connection with docket C-1628. Once the explicit subsidies fall below the level of the implicit subsidies, the NUSF fund is no longer "sufficient."

At the same time the Commission has been reducing high cost support to Qwest, the Commission has also increased the regulatory burden associated with NUSF support, has used NUSF support to prop up Qwest's competition, and has challenged Qwest's ability to return access rates to levels that would "replace" the lost support. The Commission has taken these steps during a time when Qwest has lost more than half of its customers in Nebraska's largest city to wireline competition, and during a time when there are more wireless phones in Nebraska than wireline access lines. In this competitive environment, the regulatory burdens of the NUSF will at some point begin to outweigh the support received. The Staff's Proposal in this docket indicates that point may be here.

At a bare minimum, the Commission must allow carriers to increase rates for switched access or business lines (the services for which prices were reduced in docket C-1628 and related dockets) in a revenue-neutral fashion, as outlined in Qwest's two sets of comments in this *Progression Order No.1*. More appropriately, the Commission should not simply reduce the fund size, but pursue the remaining measures Qwest has proposed in its earlier comments.

4. *Distribution Model Inputs (Earnings Cap)*

Qwest commented in earlier phases that the Commission should consider a lower earnings cap, such as ten percent, to target funds to carriers and areas where those funds are needed to provide service and infrastructure; not merely to provide high rates of return for carriers. The proposed reduction of the earnings cap to 11.25%, plus imputation of federal support into those calculations, represents a step in that direction, and Qwest would merely incorporate its earlier comments on this subject. However, the precise method of calculating the earnings cap, and accounting for federal USF support is not spelled out in the proposal, so further comment is difficult at this time.

5. *Mandatory Step-Downs*

The Proposal regarding mandatory step-downs in the transitional method is not fully described, making comment difficult. If Staff would describe how such step-downs would work, then interested parties could comment more fully as to whether the Proposal in this regard is needed, or if it is fair. However, as a general matter, the

transitional mechanisms set up in November 2004 were fair, and there is no reason to depart from those transitions now. Those transition mechanisms were put in place to prevent dramatic reductions in support for affected carriers; those considerations still hold true today and should not be significantly altered.

6. *Benchmark*

The benchmark portion of the Proposal is the least-described section. Far more detail is required to permit informed decision-making or comment. For example: What rates or revenues would be included in developing an urban rate average – residential rates, business rates, long distance rates, information services, features, or other services? What providers' rates for these services would be considered? What technologies for delivering these services would be included – wireline, wireless, VoIP, or other technologies? Should only facilities-based providers' rates be included, or should partial facilities based providers, resellers, and/or UNE-P or QPP providers be included?

The Proposal also fails to describe how the "comparability standard" would be determined, or how it would be computed. In these matters, the devil is certainly in the details, and as a result, Qwest cannot comment on this proposal at this time.

7. *Effect on Other NUSF Programs*

Qwest agrees that no solution to the issues raised in *Progression Order No.1* in this docket should impact either the Telehealth program or the Nebraska Telephone

Assistance Program (NTAP).

Conclusion

As noted throughout these comments and in Qwest's introduction above, the Proposal does not provide sufficient information either for parties to comment or for the Commission to make its decision. Qwest respectfully requests that the Commission ask the Staff to flesh out the specifics of its Proposal, and establish a new comment cycle before proceeding further to any evidentiary phase of this *Progression Order No. 1*.

Dated Thursday, August 17, 2006.

Respectfully submitted,

QWEST CORPORATION

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Initial Comments was hand delivered and mailed on August 17, 2006 by United States

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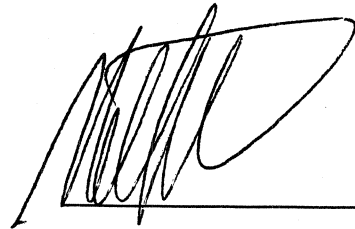
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